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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/384,517	08/27/99	DELDUCA	PCOS:26

RONALD B. COOLLLEY, ESQ.  
JENKINS & GILCHRIST  
1445 ROSS AVENUE  
SUITE 3200  
DALLAS TX 75202

IM62/1006

EXAMINER

DRODGE, J

ART UNIT	PAPER NUMBER
----------	--------------

1723

DATE MAILED:

10/06/00

13

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**



UNITED STATES DEPARTMENT OF COMMERCE  
Patent and Trademark Office

NOTICE OF ALLOWANCE AND ISSUE FEE DUE

IM62/1006

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APPLICATION NO.	FILING DATE	TOTAL CLAIMS	EXAMINER AND GROUP ART UNIT	DATE MAILED
09/384,517	08/27/99	010	DRODGE, J	1725 00/06/00
First Named Applicant	DELDUCA,	35 USC 154(b) term ext. = 0 Days.		

TITLE OF INVENTION MODIFIED ATMOSPHERE PACKAGE

ATTY'S DOCKET NO.	CLASS-SUBCLASS	BATCH NO.	APPLN. TYPE	SMALL ENTITY	FEE DUE	DATE DUE
1 PCOS:26	426-124.000	T40	UTILITY	NO	\$1240.00	01/09/01

**THE APPLICATION IDENTIFIED ABOVE HAS BEEN EXAMINED AND IS ALLOWED FOR ISSUANCE AS A PATENT. PROSECUTION ON THE MERITS IS CLOSED.**

**THE ISSUE FEE MUST BE PAID WITHIN THREE MONTHS FROM THE MAILING DATE OF THIS NOTICE OR THIS APPLICATION SHALL BE REGARDED AS ABANDONED. THIS STATUTORY PERIOD CANNOT BE EXTENDED.**

**HOW TO RESPOND TO THIS NOTICE:**

I. Review the SMALL ENTITY status shown above.

If the SMALL ENTITY is shown as YES, verify your current SMALL ENTITY status:

- A. If the status is changed, pay twice the amount of the FEE DUE shown above and notify the Patent and Trademark Office of the change in status, or
- B. If the status is the same, pay the FEE DUE shown above.

If the SMALL ENTITY is shown as NO:

- A. Pay FEE DUE shown above, or
- B. File verified statement of Small Entity Status before, or with, payment of 1/2 the FEE DUE shown above.

II. Part B-Issue Fee Transmittal should be completed and returned to the Patent and Trademark Office (PTO) with your ISSUE FEE. Even if the ISSUE FEE has already been paid by charge to deposit account, Part B Issue Fee Transmittal should be completed and returned. If you are charging the ISSUE FEE to your deposit account, section "4b" of Part B-Issue Fee Transmittal should be completed and an extra copy of the form should be submitted.

III. All communications regarding this application must give application number and batch number. Please direct all communications prior to issuance to Box ISSUE FEE unless advised to the contrary.

**IMPORTANT REMINDER: Utility patents issuing on applications filed on or after Dec. 12, 1980 may require payment of maintenance fees. It is patentee's responsibility to ensure timely payment of maintenance fees when due.**

PATENT AND TRADEMARK OFFICE COPY

# Notice of Allowability

Application No.  
09/384,517

Applicant(s)  
DELDUCA ET AL

Examiner  
Joseph Drodge

Group Art Unit  
1723



All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance and Issue Fee Due or other appropriate communication will be mailed in due course.

☒ This communication is responsive to the Response, Terminal Disclaimer and Declaration filed on August 28, 2000

☒ The allowed claim(s) is/are 16-25

☒ The drawings filed on Aug 27, 1999 are acceptable.

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been  
☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_.

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

A SHORTENED STATUTORY PERIOD FOR RESPONSE to comply with the requirements noted below is set to EXPIRE **THREE MONTHS** FROM THE "DATE MAILED" of this Office action. Failure to timely comply will result in ABANDONMENT of this application. Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

☐ Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL APPLICATION, PTO-152, which discloses that the oath or declaration is deficient. A SUBSTITUTE OATH OR DECLARATION IS REQUIRED.

☐ Applicant MUST submit NEW FORMAL DRAWINGS

☐ because the originally filed drawings were declared by applicant to be informal.

☐ including changes required by the Notice of Draftsperson's Patent Drawing Review, PTO-948, attached hereto or to Paper No. \_\_\_\_\_.

☐ including changes required by the proposed drawing correction filed on \_\_\_\_\_, which has been approved by the examiner.

☐ including changes required by the attached Examiner's Amendment/Comment.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the reverse side of the drawings. The drawings should be filed as a separate paper with a transmittal letter addressed to the Official Draftsperson.

☐ Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Any response to this letter should include, in the upper right hand corner, the APPLICATION NUMBER (SERIES CODE/SERIAL NUMBER). If applicant has received a Notice of Allowance and Issue Fee Due, the ISSUE BATCH NUMBER and DATE of the NOTICE OF ALLOWANCE should also be included.

## Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

☒ Interview Summary, PTO-413

☒ Examiner's Amendment/Comment

☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material

☒ Examiner's Statement of Reasons for Allowance

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### EXAMINER'S AMENDMENT

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Michael Blankstein on October 3, 2000.

2. The application has been amended as follows:

Within Insert "A1" to page 1 of the Specification in the Preliminary Amendment mailed on August 27, 1999 "co-pending" has been deleted, --now patent 5,948,457,-- has been inserted after "1998," --now patent 5,811,142,-- has been inserted after "December 13, 1996," and --, now patent 5,698,250.-- has been inserted after "April 13, 1996".

3. The following is an examiner's statement of reasons for allowance: The prior art rejection based on the Breen et al references is deemed to be overcome by the Rule 131 Declaration filed on August 28, 2000 and the Double Patenting rejections based on the parent applications are overcome by the Terminal Disclaimer filed on August 28, 2000 which is deemed acceptable. The claims otherwise are deemed to distinguish over the prior art, generally in view of recitation in claims 16 and 25 of the modified atmosphere package either containing a retail cut of raw meat or

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sized to substantially enclose a retail cut of raw meat in combination with recitation of the second compartment containing both a n oxygen scavenger and an oxygen scavenger accelerator.

A factor in determining the patentability of the claims over the Hayhurst et al patent of record is that Hayhurst is directed to a package for housing precooked , or other non-perishable types of meat or other food products which are held in a compartment with a small amount of water, with the second compartment containing a combination of oxygen scavenger and accelerator chosen to periodically react with such water to periodically remove residual oxygen. Such deliberate including of water is deemed not compatible with prior art directed to packaging retail cuts of raw meat adapted to extend the shelf life of such raw meat.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph W. Drodge whose telephone number is (703) 308-0403. The examiner can normally be reached on Monday-Friday from approximately 8:30 AM - 4:45 PM.


The fax phone number for this Group is (703) 305-3599. When filing a FAX in Tech Center 1700, please indicate in the Header (upper right) "Official" for papers that are to be entered into the file, and "Unofficial" for draft documents and other communication with the PTO that are not for entry into the file of the application. This will expedite processing of your papers.

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Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0661.

  
Joseph W. Drodge  
Primary Examiner  
Art Unit 1723

JWD  
October 4, 2000